

IN THE
Supreme Court of the United States
OCTOBER TERM, 1955

NO. 530

UNITED AUTOMOBILE, AIRCRAFT AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, AFFILIATED WITH THE
CONGRESS OF INDUSTRIAL
ORGANIZATIONS, UAW-CIO,

Appellant,

v.

WISCONSIN EMPLOYMENT RELATIONS
BOARD and KOHLER CO., a Wisconsin
Corporation,

Appellees.

BRIEF OF JOHN BEN SHEPPERD
ATTORNEY GENERAL OF THE STATE
OF TEXAS, AMICUS CURIAE

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TO THE HONORABLE SUPREME COURT OF THE
UNITED STATES:

The State of Texas, as Amicus Curiae, appearing
herein by its Attorney General, John Ben Shepperd,
respectfully files this brief in this cause in support of
the motion of Appellees, Wisconsin Employment Re-

lations Board and Kohler Co., to dismiss the appeal because of the importance to the State of Texas of the issues involved and the necessity that it retain the power to restrain the picketing of homes, the blocking of roadways, mass picketing and accompanying violence, and the intimidation and coercion of employees.

Interest of The State of Texas

The State of Texas has a statute similar to that of the State of Wisconsin which, among other things, makes it unlawful for any person or persons to interfere with, obstruct, or intimidate another in the exercise of his lawful right to work or to enter upon the performance of any lawful vocation, or in freely entering or leaving any premises. It is also made unlawful to engage in any form of mass picketing which, among other things, includes pickets which constitute or form any character of obstacle to the free ingress and egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.

Statement of the Case

The Wisconsin Employment Relations Board conducted a hearing and found that union employees were engaged in mass picketing at the entrance of the company's plant. It was also found that they

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were attempting to prevent persons from working, that obstructions were placed in the public streets, and that homes of employees of the company were being picketed. The Board issued a cease and desist order. When this was disregarded, the Board petitioned the Circuit Court, which entered a judgment confirming the order of the Board and, by injunction, decreed enforcement of the order. The unions and individuals enjoined appealed from the judgment to the Wisconsin Supreme Court. That Court affirmed the judgment of the Circuit Court, 269 Wis. 583, 70 N.W.2d 194 (1955), holding that the authoritative interpretation of Federal statutes rests in the Federal courts, and that their highest court does not agree with Appellant's contention that the Taft-Hartley Act has taken from the States jurisdiction over such manifestations as mass picketing, intimidation, and obstruction of streets.

ARGUMENT

Point No. I

The Taft-Hartley Act does not preempt the policing of mass picketing, intimidation, and obstruction of Streets in connection with strikes.

Argument and Authorities

The Supreme Court of Wisconsin correctly held that the State has jurisdiction in problems involving mass picketing, intimidation of employees and the obstruction of streets, and that the Congress had not pre-empted the field. Since the Federal Constitution neither cedes exclusive jurisdiction thereof to Con-

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gress nor denies such jurisdiction to the States, it remains only to be decided whether congressional action in the form of the Taft-Hartley Act has pre-empted the field. Such pre-emption can be effected only by congressional specification or conflict.

The States have the power to legislate against what are found to be injurious practices in their internal, commercial, and business affairs so long as their laws do not run afoul of a specific constitutional prohibition or a valid federal law. *Cooley v. Board of Wardens of Port of Philadelphia*, 12 How. 299.

Beginning with *Allen-Bradley Local 1111 v. Wisconsin E. R. Board*, 315 U.S. 740 (1942) and ending with *Weber Et Al v. Anheuser-Busch Inc.*, 348 U.S. 468 (1954) this Court has consistently held that Congress had not pre-empted the field in matters of this nature and that the State would have jurisdiction rather than the National Labor Relations Board. As stated by the Wisconsin Supreme Court, the same facts are present in this case as were present in the *Allen-Bradley Local Case*. In that case the United States Supreme Court held that the mere enactment of the National Labor Relations Board Act had not excluded State regulation of the type which Wisconsin had exercised. It was therein stated:

“We agree with the statement of the United States as *amicus curiae* that the federal Act was not designed to preclude a State from enacting legislation limited to the prohibition or regulation of this type of employee or union activity. The Committee Reports on the federal Act plainly indicate that it is not ‘a mere police court measure’ and that

authority of the several States may be exerted to control such conduct. Furthermore, this Court has long insisted that an 'intention of Congress to exclude States from exerting their police power must be clearly manifested.' Napier v. Atlantic Coast Line R. Co. 272, U.S. 605, 611, and cases cited; Kelly v. Washington, 302 U.S. 1, 10; South Carolina Highway Dept. v. Barnwell Bros., 303 U.S. 177; H. P. Welch Co. v. New Hampshire, 306 U.S. 79, 85; Maurer v. Hamilton, 309 U.S. 598, 614; Watson v. Buck, *supra*. Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal board." (Emphasis added.).

It is respectfully submitted that jurisdiction of the conduct in question relating to actual or threatened violence to person or property is one wholly left to the States.

In *International Union v. Wisconsin Employment Relations Board*, 336 U.S. 245 (1948), the Court upheld a State injunction which prohibited recurrent and unannounced work stoppage by union employees, stating:

"Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied. The Labor Management Relations Act declared it to be an unfair labor practice for a union to induce or engage in a strike or concerted refusal to work where an object thereof is any of certain enumerated ones. § 8(b) (4), 61 Stat. 140, 141; 29 U.S.C. § 158(b) (4). Nevertheless the conduct here described is not forbidden by this Act and no proceeding is authorized by which

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the Federal Board may deal with it in any manner. While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. *Policing of such conduct is left wholly to the States. In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the State's power to police coercion by those methods.*" (Emphasis added.)

In *Garner v. Teamsters Union*, 346 U.S. 485 (1953), the Court struck down a State statute which had been used to enjoin peaceful picketing, holding that Congress had taken in hand this particular type of controversy where it affects interstate commerce and that therefore the grievance was not subject to litigation in the Courts of the State. However, the Court said that the State may exercise powers over such local matters as public safety and order and the use of streets and highways. At page 488 it was stated:

"Congress has taken in hand this particular type of controversy where it affects interstate commerce. In language almost identical to parts of the Pennsylvania statute, it has forbidden labor unions to exert certain types of coercion on employees through the medium of the employer. . . .

"This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely

ungoverned.' In such cases we have declined to find an implied exclusion of state powers. *International Union v. Wisconsin Board*, 336 U.S. 245, 254. Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' *Allen-Bradley Local v. Wisconsin Board*, 315 U.S. 740, 749. Nothing suggests that the activity enjoined threatened a probable breach of the state's peace or would call for extraordinary police measures by state or city authority. . . ."

In *United Construction Workers v. Laburnum Construction Company Corporation*, 347 U.S. 656 (1954), the Court held that the Taft-Hartley Act of 1947 had not given the N.L.R.B. such exclusive jurisdiction over the subject matter of a common law tort action for damages as to preclude an appropriate State Court from hearing and determining the issues where the acts were unfair labor practices under the State statute. It was clearly stated that if no conflict existed, State procedure survived.

In the most recent case before the Supreme Court, *Weber Et Al v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1954), the State issued an injunction where two unions each claimed that work was to be done in a certain area only by its own workers. After an N.L.R.B. hearing the complaint had been dismissed because of no dispute. The respondent then filed a complaint in a State court alleging violations of other sections of the Taft-Hartley Act and violations of the

State's Restraint of Trade Law. Injunction under State statute was then issued. The United States Supreme Court struck it down, denying jurisdiction in the State court because the respondent had specifically alleged unfair labor practices within the jurisdiction of the N.L.R.B.

The *Allen-Bradley Local Case* was again cited by the Court as good authority. The Court stated at page 482:

... We do not read this as an unambiguous determination that the IAM's conduct amounted to the kind of mass picketing and overt threats of violence which under the *Allen-Bradley Local Case* give the state court jurisdiction."

In *Kelly v. Washington*, 302 U.S. 1 (1937), the Court states at page 9:

"Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. Minnesota Rate Cases, 230 U.S. 352, 402. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the ex-

ercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be' reconciled or consistently stand together." (Emphasis added.)

Situations relating to mass picketing, obstructing entrance to and egress from establishments, and obstructing streets and public roads can best be dealt with at the State level rather than by the National Labor Relations Board. As stated above "the principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or consistently stand together." We respectfully submit that Congress did not intend by the enactment of the Taft-Hartley Act to deprive States of jurisdiction in areas of this nature. This Act specifically enumerates those areas of labor relations which Congress intended to control. The activities concerned herein were not included. These are matters relating to internal strife that go beyond the labor relations Congress intended to regulate. Conflicts of this nature constitute an inner turmoil which is regulated effectively by local and State enforcement bodies which are available to cope with these disorders immediately. Moreover, no adequate relief has been furnished by the Taft-Hartley Act to care for situations of this nature. To deny a State the right to police this type of conduct in the exercise of its police power would jeopardize and undermine the frame-

work of State government which was so firmly established by the framers of our constitution. It is therefore evident that the facts from which this controversy stems are not such as to come within the purview of the Taft-Hartley Act.

Conclusion

We respectfully submit that federal labor legislation has not pre-empted the field and that the National Labor Relations Board has no jurisdiction in this controversy. These are matters clearly within those powers left to the States, and it is therefore urged that this Honorable Court affirm the judgment of the Wisconsin Supreme Court.

Respectfully submitted,

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